

## SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** is made and entered into by and among the **United States of America** ("United States"), acting through the **United States Department of Justice**, on behalf of the **Department of Housing and Urban Development** ("HUD"), collectively the "Agencies," and **Ms. Susan Gard** ("Ms. Gard"). Ms. Gard and the Agencies identified above shall be collectively referred to in this Settlement Agreement as the "Parties."

**WHEREAS** the Interstate Land Sales Full Disclosure Act, 15 U.S.C. §§ 1701 et seq. ("Act"), requires certain developers, as that term is defined in Section 1701(5) of the Act, to file a statement of record with HUD and to furnish a property report to purchasers of lots subject to the Act, prohibits developers from engaging in improper or fraudulent practices in connection with the sale of lots subject to the Act, and provides that failure to provide a property report to a purchaser authorizes the purchaser to rescind the purchase transaction;

**WHEREAS** Buyers Source Sugarmill, L.L.C., a Virginia limited liability company, Buyers Source Savannah, L.L.C., a Virginia limited liability company, Buyers Source Valley Group, L.L.C., a Virginia limited liability company, Island Realty, L.L.C. f/k/a Buyers Source Island, L.L.C., an Arkansas limited liability company (collectively referred to as "Buyers Source"), and Belmont Properties, Inc., a Virginia corporation, are, or were, primarily engaged in the sale of lots, including lots located in subdivisions in Sugarmill Woods, Florida; Savannah Lakes, South Carolina; Apple Valley, Ohio; and Holiday Island, Arkansas (hereinafter the "Subdivisions");

**WHEREAS** Susan Gard was a principal of the Buyers Source companies and Belmont Properties, Inc.;

**WHEREAS** the Agencies allege that, in connection with lots located in the Subdivisions, Buyers Source and Ms. Gard were developers under the Act and failed to file a statement of record with HUD or furnish property reports to certain purchasers of lots located in the Subdivisions, and engaged in a series of improper sales practices in connection with the sale of lots located in the Subdivisions (collectively the "Prohibited Practices");

**WHEREAS** the Agencies are investigating Buyers Source's Prohibited Practices and have commenced litigation against Ms. Gard, Buyers Source, Belmont Properties, Inc., and other parties in connection with the Prohibited Practices;

**WHEREAS** HUD contends that Ms. Gard violated the Act in connection with the Prohibited Practices by, among other things, selling and offering to sell lots with knowledge that Buyers Source sales agents were selling lots without providing required disclosures and by using various fraudulent practices;

**WHEREAS** the Agencies obtained an injunction in the litigation freezing the assets of Ms. Gard and other defendants and enjoining them from further fraudulent conduct;

**WHEREAS** Ms. Gard agrees that the financial obligations set forth in the Agreement are non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(7), and that the Agencies retain the right to establish in a bankruptcy proceeding that Ms. Gard committed fraud to establish the non-dischargeability of the debt under 11 U.S.C. § 523(a)(2), and Ms. Gard reserves the right to claim that she did not commit fraud;

**WHEREAS** the Agencies desire to use the monetary penalties in this Agreement to aid injured purchasers;

**WHEREAS** Ms. Gard denies any wrongdoing in connection with the alleged Prohibited Practices, and denies that she violated the Act;

**WHEREAS** the Settlement Agreement shall not constitute an admission of wrongdoing, liability, or legal fault on the part of Ms. Gard for any conduct underlying this Settlement Agreement, nor shall it be construed as an admission that any person or entity acted wrongfully, unjustifiably or otherwise;

**WHEREAS**, to avoid further litigation and further expense, and to reach a mutually satisfactory settlement and compromise of the Agencies' allegations against Ms. Gard;

**NOW, THEREFORE**, in consideration of the mutually negotiated promises, covenants, and obligations in this Settlement Agreement (hereinafter, the "Settlement Agreement" or the "Agreement"), the Parties reach a complete and final settlement as set forth below:

1. This Settlement Agreement is effective on the date of signature of the last signatory to the Settlement Agreement (hereinafter, the "Effective Date").
2. Ms. Gard shall satisfy her monetary obligation under this Agreement by making payments in the amounts set forth in this paragraph on the first day of every July, October, January, and April of the Agreement term to the individual or entity appointed by the Court in Alphonso Jackson v. Buyers Source Sugarmill, L.L.C., Case No. 2:03cv591 (E.D. Va.), for the purpose of collecting and distributing said funds ("the Receiver"). In the event that payments come due prior to the Court's appointment of the Receiver, payments shall be made to Donna J. Hall, Receiver, at Troutman, Sanders, LLP, 222 Central Park Avenue, Suite 2000, Virginia Beach, Virginia 23462. Subject to paragraph 3, Ms. Gard shall make said payments according to the following schedule: 10 percent of her total yearly taxable and non-taxable gross, pre-tax income, including but not limited to salary, commissions, in-kind payments, gifts, capital gains,

and inheritance (collectively "total income") up to \$30,000; 15 percent of all total income between \$30,001 and \$50,000; and 20 percent of all total income above \$50,000. The first quarterly payment shall be due on July 1, 2004, and subject to paragraph 3, the last quarterly payment shall be due on April 1, 2009. If Ms. Gard fails to make any payment within the required time period, the Receiver shall have the right to collect interest from Ms. Gard on any late payments at a rate of ten (10) percent per annum, in addition to retaining any other remedies provided by law, equity, or this Agreement, including the right of the Agencies, the United States, and/or the Receiver to move that Ms. Gard be held in contempt of any order entered by the Court. Notwithstanding the foregoing, Ms. Gard's obligation under the Agreement shall in no event exceed \$250,000 ("the Monetary Obligation"), in addition to any amounts due as interest on late payments, or as a result of the obligations set forth in paragraphs 5-6. In the event that Ms. Gard makes any two payments more than 60 days after the due date for the payments, or one payment more than ninety days after the due date for the payment, Ms. Gard shall pay within 60 days of notice from the Receiver the difference between \$250,000 and any quarterly payments made to that point. The failure to make a payment within 60 or 90 days of its due date shall not have this consequence if and only if the failure to pay within that time period is due to physical incapacity. Notwithstanding any other provision of this Agreement, the Parties agree that the Monetary Obligation is and shall be construed as a penalty or forfeiture that is payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss. The Parties further agree that the amount of the penalty reflects the disgorgement of profits from the Prohibited Practices, limited only by the amount of Ms. Gard's profits and her represented ability to pay. In the event that Ms. Gard should declare bankruptcy, Ms. Gard shall not oppose a motion by the United States, the

Agencies, and/or the Receiver to lift the stay as to the Monetary Obligation or any other obligation set forth in this Agreement.

3. Ms. Gard may alternatively satisfy the Monetary Obligation by paying the Receiver \$125,000, including prior payments made pursuant to the Agreement but excluding interest payments and payments made pursuant to paragraphs 5-6, on or before October 31, 2005.

4. During the term of the Agreement, Ms. Gard shall provide the Receiver with a copy of all documentation of her income for a particular quarter together with the payment for that quarter. Ms. Gard shall also provide copies of her tax returns, W2 statements, and form 1099s within two weeks of submission or receipt, and shall also provide any other documentation concerning her income requested by the Receiver. If Ms. Gard earns income for a particular quarter but does not report that income in some form at the time of the payment for that quarter, Ms. Gard shall pay such income to the Receiver, provided that in no event shall the total amount paid exceed \$250,000.

5. Ms. Gard represents that she has disclosed to the Agencies in an affidavit, executed under penalty of perjury on March 12, 2004, all assets that she owns, possesses, or controls as of that date, either individually or jointly with any other individual or entity, including her husband. In the event that Ms. Gard has failed to disclose all of her assets, and in addition to any other obligation set forth in this Agreement, Ms. Gard shall transfer those assets, up to an amount not exceeding \$1 million, to the Receiver within two weeks of written notice from the Receiver or the Agencies.

6. Ms. Gard hereby assigns to the Agencies all of her interest in the assets of any of the entities that are defendants in Alphonso Jackson v. Buyers Source Sugarmill, L.L.C., Case No. 2:03cv591 (E.D. Va.), including but not limited to the telemarketing database currently held by defendant BSMC, Inc. She further agrees to

cooperate with the Agencies and the Receiver in selling any such assets, including but not limited to said database, to the extent that she is legally permitted to do so.

7. Ms. Gard agrees that after the Effective Date she will no longer, either in her individual capacity, through a company owned or controlled by Ms. Gard, in concert with any other individual or entity, or in any other capacity, participate or otherwise engage in the sale of land in any "subdivision," as defined in 15 U.S.C. § 1701(3). As part of this obligation, Ms. Gard shall not violate any provision of the Act or its implementing regulations and shall not engage in any transaction in which a time-share interest is used in any fashion as an item of exchange or marketing inducement in the sale of real property.

8. Ms. Gard agrees to cooperate with the Agencies in their ongoing investigation of and ongoing or potential litigation with any individual or entity related to this matter, or in any future investigation of, or litigation with, any individual or entity concerning violations of the Interstate Land Sales Full Disclosure Act. Ms. Gard further agrees to cooperate with the Agencies and the Receiver in their efforts to collect and distribute any sums paid or due under this Agreement, including any investigation meant to determine whether Ms. Gard disclosed all assets that she owned, controlled, or possessed as of the Effective Date.

9. In consideration of Ms. Gard's full settlement of the obligations set forth in this Settlement Agreement, the Agencies hereby waive, release, and remit Ms. Gard from any civil or administrative claim, sanction, or remedy, direct or indirect, that the Agencies have for or relating to any matter underlying this Settlement Agreement or involving Ms. Gard, including the Act and any statute, regulation, or common-law theory creating a cause of action for civil or administrative claims, sanctions, remedies, damages, or penalties, and including claims related to any evidence of indebtedness transferred to the Agencies or the Receiver from Thomas Brewer. Any order submitted

by the Agencies to the Court related to the Receiver shall contain a provision requiring the Receiver to abide by the terms of this Agreement.

10. Ms. Gard hereby waives, releases, and remits any and all claims, directly or indirectly, against the Agencies, or any employee of the Agencies, for the actions of the Agencies in pursuing their rights and claims leading to the settlement of this matter.

11. Notwithstanding any other term or condition of this Settlement Agreement, specifically reserved and excluded from the scope and terms of the releases in this Settlement Agreement are any and all claims based on such obligations as are created by this Settlement Agreement.

12. This Settlement Agreement constitutes the complete agreement between the Parties as to the matters addressed herein. This Settlement Agreement may not be amended except by written consent of the Parties.

13. The Parties to this Settlement Agreement shall bear their own attorney's fees and costs, including the preparation and performance of this Settlement Agreement.

14. The Parties represent that this Settlement Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever. No provision of this Settlement Agreement shall be construed against any party by reason of such party having drafted such provision of the Settlement Agreement.

15. This Settlement Agreement is intended for the benefit of the Agencies and Ms. Gard, and by this instrument the Parties do not waive, compromise, or release any claims or causes of action against any other person or entity not expressly released by this Settlement Agreement.

16. Failure by any Party to enforce any provision of this Settlement Agreement shall not be construed as a waiver by such Party of any provision, nor in any way affect the validity of this Settlement Agreement or any part thereof.

17. If any provision of this Settlement Agreement is determined to be invalid or unenforceable for any reason, and subject to paragraphs 2 and 21, then such provisions shall be treated as severed from the remainder of this Settlement Agreement and shall not affect the validity and enforceability of all the other provisions of this Settlement Agreement as long as such severance does not materially change the Parties' rights and obligations.

18. This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

19. Each person who signs this Settlement Agreement in a representative capacity warrants that his or her execution of this Settlement Agreement is duly authorized, executed, and delivered by and for the individual or entity for which he or she signs.

20. Upon the effective date of this Settlement Agreement, and subject to Paragraphs 2 and 21, the Agencies shall consider all matters underlying this Settlement Agreement closed, consistent with the faithful performance by the Parties of the obligations imposed herein.

21. Within a reasonable period after the Effective Date, the parties agree to move jointly that the Court enter the Order attached as Exhibit A ("Consent Decree") as part of the proceedings in Alphonso Jackson v. Buyers Source Sugarmill, L.L.C., Civ. No. 2:03cv591 (E.D. Va.). In the event that the Court declines to enter the Consent Decree, or an order requiring Ms. Gard to abide by the terms of this Agreement, or declines to appoint a receiver, the Agencies reserve the right to designate a different entity to receive all payments and assets due under this Agreement, or to withdraw from the Agreement and declare it null and void by providing written notice to Ms. Gard. If the Agencies elect to withdraw from the Agreement for any reason, the Agencies shall

move the Court to order the Receiver to return any monies previously paid by Ms. Gard pursuant to this Agreement.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK

ON BEHALF OF THE UNITED STATES OF AMERICA


Dated:

May 6, 2004

By:

  
JOSEPH H. HUNT  
Director  
United States Department of Justice  
Civil Division  
Federal Programs Branch  
20 Massachusetts Ave., N.W.  
Washington, DC 20001

ON BEHALF OF THE U.S. DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT

<p>Dated:</p> <p><u>3/23/04</u></p>	<p>By: </p> <p>JOHN C. WEICHER Assistant Secretary for Housing Federal Housing Commissioner U.S. Department of Housing and Urban Development 451 Seventh Street, S.W., Room 9100 Washington, D.C. 20410</p>
-------------------------------------	---

ON BEHALF OF MS. SUSAN GARD

<p>Dated:</p> <p><u>3-11-04</u></p>	<p>By: <u>Susan Gard</u> SUSAN GARD 2113 Patridge Place Suffolk, VA 23433</p>